

Response

The claims Examiner has deemed incomplete the Response to Non-Final Office Action timely submitted on July 12, 2006. The Applicants respectfully disagree.

In the Notice of Incomplete Reply the Examiner explains that he believes the Response to Non-Final Office Action was incomplete because “no claim currently reads on the elected invention.” In support of this conclusion the Examiner states “Applicants elected poloxamer 407 in their response of March 23, 2006.” However, the Applicants respectfully assert that the election of poloxamer 407 in the Response filed March 20, 2006 was an election of species for search purposes only. Critically, an election of species for search purposes is not the same as an election of an invention in response to a restriction requirement. Reproduced below is an excerpt from said Response substantiating the Applicants contention.

Election of Species for Search Purposes

The Applicants respectfully elect **poloxamer 407** as the Species for search purposes. With respect to Group II, claims 12-17 read on the elected species. Should the Examiner accept the Applicants’ proposal to join Groups II and III: With respect to Group III, claim 20 reads on the elected species.

Of course, the elections of Species made herein are solely for search purposes. The Applicants expressly reserve the right to prosecute species not elected herein in other patent applications claiming the benefit of the filing date of this application. Furthermore, the Applicants understand that upon allowance of a generic claim, they will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim. See 37 CFR 1.141.

Moreover, in the instant application the Applicants elected Group II in their earlier Response to Restriction Requirement, submitted January 24, 2006. Reproduced below is an excerpt from said Response substantiating the Applicants contention.

In response to the outstanding Restriction Requirement in the above-identified application, mailed January 5, 2006, the Applicants respectfully elect **Group II**, claims 12-19, drawn to a material wherein the viscosity of an aqueous solution increases by at least a factor of two over a temperature range of about 2 C, classified in class 264, subclass 345.

The Applicants respectfully maintain that the claims as amended in the Response filed July 12, 2006 read on the elected Invention (i.e., Group II). Consequently, the Applicants respectfully assert that the Examiner has erroneously characterized said Response as incomplete. Nevertheless, the Applicants have amended herein claim 12 to add poloxamer 407 to the Markush group defining the claimed copolymer. This claim amendment finds support in the application as filed; therefore, no new matter has been added.

Accordingly, the Applicants respectfully request the Examiner to resume examination of the pending claims of the instant application.

Overview of Pending Claims

Claims 12-14 are pending. Claim 12 has been amended. Claims 1-11 and 15-20 have been canceled without prejudice. Support for the claim amendments can be found throughout the application, including the claims as originally filed. Therefore, no new matter has been added. Importantly, the claim amendments and cancellations should not be construed to be an acquiescence to any of the claim rejections. Rather, the amendments and cancellations are being made solely to claim more clearly the invention and to expedite the prosecution of the instant application. The Applicants expressly reserve the right to further prosecute the same or similar claims in subsequent patent applications claiming the benefit of priority to the instant application. 35 U.S.C. § 120.

Favorable reconsideration of the pending claims is respectfully requested in view of the above claim amendments and cancellations; and the remarks advanced in the Response to Non-Final Office timely submitted on July 12, 2006, all of which are hereby incorporated by reference.

Fees

The Applicants believe that no fee is due in connection with the filing of this Response. Nevertheless, the Commissioner is hereby authorized to charge any fees due in connection with the filing of this Response to our Deposit Account, No. 06-1448, reference PMX-003.02.

Conclusion

The Applicants believe that the pending claims are in condition for allowance. If a telephone conversation with Applicants' Attorney would expedite prosecution of the above-identified application, the Examiner is urged to contact the undersigned.

Respectfully submitted,
Foley Hoag LLP

By: _____



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